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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/747,607  
Filing Date: December 29, 2003  
Appellant(s): DROUET ET AL.

\_\_\_\_\_  
John A. Merecki, Reg. No. 35,812

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed December 30, 2008 appealing from the Office action mailed October 22, 2008.

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**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**NEW GROUNDS OF REJECTION**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

Claim 1, 2 and 4 are unpatentable under 35 U.S.C. 102(b) as being anticipated by Nozaki (US 6,128,644).

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

7,127,492	CALO ET AL.	10-2006
6,128,644	NOZAKI	10-2000

**(9) Grounds of Rejection**

The following grounds of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calo et al (US 7,127,492).

Regarding claim 1, as shown in Figures 1-8, Calo discloses a data transmission system comprising at least a data transmission network (101; Figure 1) based upon an IP protocol; at least a content server (104; Figure 1) for providing data requested by a user (102, 103; Figure 1)

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connected to the network; a plurality of proxies (105, 106; Figure 1) having a cache function (701-709; Figure 7), each proxy capable of having stored the requested data (col. 1: line 55 – col. 2: line 2, and col. 5: line 65 – col. 6: line 17), one of the proxies comprising a user proxy which receives any request for data from the user (proxy server comprising load balancer; Figures 6-7, col. 3: lines 38-49 and col. 4: line 55 – col. 5: line 67).

Calo also discloses a domain name server for converting a server name provided by the user to the user proxy into an IP address of the content server (mapping machine names to IP addresses and returning an IP address corresponds to an appropriate proxy server; col. 3: lines 40-49 and col. 4: lines 58-64); and a table for providing an IP address of a proxy amongst the plurality of proxies capable of having stored the requested data (table of redirection rules specify how requests should be dispatched, based on content data requested by users, col. 5: lines 7-14).

Though Calo does not explicitly call for the DNS server including the table, but since Calo discloses all the functions described above can be implemented using a stand-alone http server (col. 5: lines 15-22) or as part of a proxy server (col. 5: lines 64-67), it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a DNS server and a table of redirection rules in Calo's proxy server for providing a complete name resolution service to all network devices.

Regarding claim 2, Calo discloses a method for obtaining data in an optimized way in a data transmission system comprising at least a data transmission network based upon an IP protocol (101); at least a content server (104) for providing data requested by a user (102, 103)

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connected to the network; a plurality of proxies (105, 106) having a cache function (701-709), each proxy capable of having stored the requested data, and one of the proxies comprising a user proxy which receives any request for data from the user (col. 1: line 55 – col. 2: line 2, col. 5: line 65 – col. 6: line 17, and col. 3: lines 38-49).

Calo also discloses a domain name server for converting a server name provided by the user to the user proxy into an IP address (a DNS server returns an IP address corresponding to an appropriate proxy server when a client requests an address for the backend server; col. 3: lines 20-49 and col. 4: lines 58-64).

Calo also teaches:

a) determining if a table stored in the domain name server contains an entry corresponding to the server name provided by the user to the user proxy (mapping a machine name to address and returning an IP address corresponding to an appropriate proxy server; col. 3: lines 20-49 and col. 4: lines 58-64),

b) determining, whether the entry includes an address of a proxy amongst the plurality of proxies (mapping a machine name to address and returning an IP address corresponding to an appropriate proxy server; col. 3: lines 20-49 and col. 4: lines 58-64),

c) returning the proxy IP address to the user proxy corresponding to the server name (determining the appropriate proxy server based on the resource URL being requested by user; col. 5: lines 7-14), and

d) sending the user request from the user proxy to the proxy IP address included in the entry (sending requests to appropriate proxy server; col. 4: line 58—col. 5: line 27).

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Calo does not explicitly call for a table stored in the DNS server, but since DNS is a name server, i.e., server storing databases of names, it would have been obvious to one of ordinary skill in the art the DNS server comprises a table for providing name resolution.

Regarding claim 4, though Calo does not explicitly call for determining whether the user proxy is a known proxy, but since Calo teaches the Wide Area Load Balancer 603 implements distributing client requests to different proxy servers within the network by means of a DNS server, it would have been obvious to one of ordinary skill in the art at the time the invention was made in order to load balancing requests among proxy servers, the user proxy has to be known to the DNS server.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Nozaki (US 6,128,644).

Regarding claim 1, as shown in Figures 1-17, Nozaki discloses a data transmission system comprising at least a data transmission network based upon an IP protocol (Figure 1; col. 1: lines 46-47); at least a content server for providing data requested by a user connected to the network (col. 1: lines 23-30, col. 6: lines 27-32 and 38-45); a plurality of proxies having a cache

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function, each proxy capable of having stored the requested data (proxy server is capable of caching resources; col. 6: lines 38-46), one of the proxies comprising a user proxy which receives any request for data from the user (all requests sent to local proxy server 120; col. 7: lines 19-24), and a domain name server for converting a server name provided by the user to the user proxy into an IP address of the content server (Figures 15-17; col. 16: lines 47-61 and col. 18: lines 4-28).

Nozaki also discloses the domain name server includes a table for providing an IP address if a proxy amongst the plurality of proxies, the table providing the proxy IP address to the user proxy, which provides the request for data to the proxy storing the requested data without requesting the data from the content server (Figures 15-17, col. 16: lines 29-61 and col. 18: lines 4-28).

Regarding claim 2, as shown in Figures 1-17, Nozaki discloses a method for obtaining data in an optimized way in a data transmission system comprising at least a data transmission network based upon an IP protocol (Figure 1, col. 1: lines 46-47); at least a content server for providing data requested by a user connected to the network (col. 1: lines 23-30, col. 6: lines 27-32 and 38-45); a plurality of proxies having a cache function, each proxy capable of having stored the requested data (proxy server is capable of caching resources; Figures 2 and 17, col. 6: lines 38-46), one of the proxies comprising a user proxy which receives any request for data from the user (local proxy server 120; col. 7: lines 19-24), and a domain name server for converting a server name provided by the user to the user proxy into an IP address (col. 16: lines 29-61 and col. 18: lines 4-28).



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Nozaki also discloses:

a) determining if a table stored in the domain name server contains an entry corresponding to the server name provided by the user to the user proxy (query the proxy server management 125; col. 16: lines 51-54);

b) determining, when there is such an entry in the table, whether the entry includes an address of a proxy amongst the plurality of proxies (col. 16: lines 51-54);

c) returning the proxy IP address to the user proxy if such a proxy IP address is included in the entry corresponding to the server name (col. 16: lines 54-59); and

d) sending the user request from the user proxy to the proxy IP address included in the entry (col. 16: lines 59-61).

Regarding claim 4, Nozaki also discloses determining whether the user proxy is a known proxy, the user proxy being a known proxy when it is contained in a list of proxies provided to the domain name server at an initialization of the system (it is inherent that the user proxy is a known proxy since it is essentially coupled to/integrated with the domain name server).

#### **(10) Response to Argument**

Appellant has argued, in substance, Calo fails to teach or suggest: **a)** The user proxy "receives any request for data from the user"; and **b)** a domain name server includes a "table for providing an IP address of a proxy amongst the plurality of proxies capable of having stored the requested data", wherein the table provides "the proxy IP address to the user proxy, which

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provides the request for data to the proxy storing the requested data without requesting the data from the content server."

Examiner respectfully disagrees, reasons are provided herewith:

**a) The user proxy "receives any request for data from the user":**

Appellant has reasoned that since "Calo uses the load balancing module to selectively direct a client service request to the appropriate proxy server "based upon current network performance characteristics." Clearly, client service requests in Calo can be directed to different proxy servers at different times, rather than to the same proxy server as set forth in independent claim 1." See page 4, ¶5.

While stating Calo utilizes a load balancing module for directing service requests is an accurate assessment, it is only a part of Calo's disclosure because Calo also teaches the load balancing module can be a components of a backend server (col. 5: lines 1-7) or a proxy server (col. 5: lines 64-65), or a stand-alone http server (col. 5: lines 16-22). Thus it would be obvious to one of ordinary skill in the art at the time the invention was made that **any/all** service requests will be transmitted to the load balancing proxy server (i.e., a proxy server with a load balancing component) since only one load balancing module is used/needed for load balancing for the network.

**b) "A domain name server includes a "table for providing an IP address of a proxy amongst the plurality of proxies capable of having stored the requested data", wherein the table provides "the proxy IP address to the user proxy, which provides the request for data to the proxy storing the requested data without requesting the data from the content server.""**

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Calo discloses the load balancer is a part of a proxy server (col. 5: lines 64-65) and can be implemented in a variety of manners. One common way is by the use of a domain name server (DNS), which is responsible for mapping machine names to IP addresses and return an IP address which corresponds to an appropriate server when a client request an address for the backend server , i.e., content server (col. 4: lines 55-64). Or by the use of a plug-in module to look at a table or redirection rules, which specify how the requests should be dispatched based on criteria including specific client IP addresses, resource (URL) as requested by clients, or cookies containing within a client's requests (col. 5: lines 7-14). Or by the use of a stand-alone http server which provides the same described functionalities (col. 5: lines 16-22). Thus, Calo's load balancing proxy server can comprise a domain name server for converting a server name provided by the user to an IP address of an appropriate proxy server, and a table of redirection rules to determine how the requests should be dispatched, e.g., selecting a proxy server to send "request for data" based on the resource (URL) request by user.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section **(9)** above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

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(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

vkn

**A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:**

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Supervisory Patent Examiner, Art Unit 2456